

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JESSICA ELAINE WOLFE, DB-0954,)	
Petitioner,)	
)	
v.)	Civil Action No. 08-1573
)	
COURT OF COMMON PLEAS OF)	
ALLEGHENY COUNTY, et al.,)	
Respondents.)	

Report and Recommendation

I. Recommendation:

It is respectfully recommended that leave to proceed in forma pauperis be granted and that the “Notice of Appeal” filed in the above captioned case be dismissed for lack of jurisdiction.

II. Report:

Jessica Elaine Wolfe, an inmate at the State Correctional Institution at Graterford has filed a “Notice of Appeal” which she seeks leave to prosecute in forma pauperis.¹ Wolfe does not seek to challenge her convictions here but rather seeks to appeal from the Order of the Pennsylvania Supreme Court which reads as follows:

AND NOW, this 30th day of September , 2008, the Application for Leave to File Original Process is Granted. The petition for Writ of Mandamus is Denied.

In order to prosecute this action, Wolfe must demonstrate a legal basis for invoking this

¹ The petitioner was convicted under the name James Elliott Wolfe at No. CP-02-CR-0004239-1996 and CP-02-CR-0004260-1996 in the Court of Common Pleas of Allegheny County, Pennsylvania.

Court's jurisdiction. As a matter of law, this Court is not vested with appellate authority over the actions of the state supreme court. Exxon Mobil Corp. V. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005).

However, if Wolfe is somehow seeking to file a petition for a writ of habeas corpus in this Court, she is reminded that she has previously unsuccessfully done so at Civil Action No. 03-1918.² In order for this Court to review her claim as a habeas corpus petition she must first seek leave of the United States Court of Appeals for the Third Circuit to file a second or successive petition here.³

Thus, for either reason or both the petition should be dismissed.⁴

Within the time limits set forth in the attached notice of electronic filing, any party may serve and file written objections to the Report and Recommendation. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

Respectfully submitted,

s/Robert C. Mitchell,
United States Magistrate Judge

Entered: November 17, 2008

² That petition was dismissed as time barred and no appeal was pursued.

³ 28 U.S.C. 2244(3)(A).

⁴ We also recommend granting leave to proceed in forma pauperis based on prior recent determinations of indigence by the Pennsylvania Supreme Court and the United States Court of Appeals for the Third Circuit.